



FAIRFAX COUNTY

STAFF REPORT

V I R G I N I A

PROPOSED ZONING ORDINANCE AMENDMENT

Modification of Certain Fence and Yard Requirements in Conjunction with Other Development
Applications and Accessory Structure Height Measurement

PUBLIC HEARING DATES

Planning Commission

March 23, 2006 at 8:15 p.m.

Board of Supervisors

May 1, 2006 at 4:00 p.m.

**PREPARED BY
ZONING ADMINISTRATION DIVISION
DEPARTMENT OF PLANNING AND ZONING
703-324-1314**

February 27, 2006

DP



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STAFF COMMENT

INTRODUCTION

The proposed amendment is one of several changes requested by the Board of Supervisors to address the approval process for certain modifications to yard requirements and increases in fence and wall height, among other issues. In the past, the most typical way a property owner could request a desired modification of specified yard requirements or an increase in fence or wall height was by variance application submitted for review to and acted upon by the Board of Zoning Appeals (BZA). However, in accordance with the 2004 Supreme Court of Virginia ruling in *Cochran v. Board of Zoning Appeals*, 267 VA 756, 594 S.E. 2d 571, the granting of a variance requires a finding that the absence of such a variance would interfere with all reasonable beneficial uses of the property, taken as a whole.

In light of this fact, the Board of Supervisors determined that it may be in the County's best interest to allow some limited flexibility with regard to certain Zoning Ordinance provisions, such as yard requirements and fence/wall height, and that these requests can be appropriately accommodated through the special permit or special exception review process. This proposed amendment only addresses fence, wall, gate and/or gate post height or yard modifications that are requested in conjunction with a rezoning, special exception or special permit for another use on the lot. Subsequent amendments will be brought forward for the Board's consideration that will address yard requirements and fence/wall height for those lots that are not the subject of a rezoning, special exception or special permit request for another use.

Staff notes that the issue of concurrent processing of multiple requests on the same property was presented at the six public information sessions held last fall on the larger issue of amending the Zoning Ordinance to include some flexibility in certain areas. While there were some individuals who expressed their opposition to any changes that would allow modifications of the requirements absent a finding that the denial of such relief would represent a hardship approaching confiscation of the property, the overall response from the public was supportive of all of the issues presented in this proposed amendment.

PROPOSED AMENDMENT

The proposed amendment addresses three instances where concurrent processing of multiple requests on the same property are recommended, clarifies current regulations with regard to the measurement of height for accessory structures and makes some adjustments to the application fee schedule, as discussed below.

Permit certain existing structures or off-street parking spaces that do not meet the current minimum setback requirements to remain in conjunction with a rezoning, special exception or special permit for another use on the lot.

This item was included in the Zoning Ordinance amendment that was previously authorized for public hearings on December 6, 2004, and was subsequently deferred indefinitely. Staff is proposing a new Sect. 8-921 of the Zoning Ordinance that would allow the BZA to approve, in conjunction with the approval of a special permit for another use, a reduction of any yard requirement for certain existing structures and uses, including but not limited to principal and accessory structures and off-street parking spaces. Under proposed Sect. 8-921, it must be demonstrated that the existing structure or use complied with the minimum required yards in effect when the use was established and that the yards have not been reduced to less than the yards required by the Zoning Ordinance since its effective date, except by condemnation or by acquisition for public purposes by any governmental agency. The proposal is in recognition of circumstances that have been identified on applications where new uses are being proposed on sites with existing structures that met the requirements in effect when the structures were constructed but do not meet the current minimum required yards. For example, under this proposed amendment, a place of worship constructed at a time when places of worship were permitted by right, but which does not meet the current minimum yard requirements, could use this special permit to expand or further develop under a single special permit application. Under the current requirements, both a special permit and a variance application are required in this situation. This amendment resolves this difficulty.

The proposed amendment also would add a new Sect. 9-625 to the Zoning Ordinance which is similar to proposed Sect. 8-921. New Sect. 9-625 would allow the Board of Supervisors to approve a reduction of any minimum yard requirements for certain existing structures and uses when such request is made as part of a rezoning or special exception for another use. The limitations described above for the similar special permit use are also proposed with this new special exception. This proposal eliminates the need for a separate variance application and public hearing process through the BZA, thereby reducing the processing time and costs for both applicants and staff.

Permit the Board of Zoning Appeals (BZA) to reduce the 10-foot setback requirement between off-street parking spaces and the front lot line and the 10-foot wide peripheral parking lot landscaping requirement in conjunction with special permit approval for another use.

This item was included in the Zoning Ordinance amendment that was previously authorized for public hearings on December 6, 2004, and was subsequently deferred indefinitely. Pursuant to Par. 8 of Sect. 11-102 of the Zoning Ordinance, off-street parking spaces in non-single family developments that are located on the ground and open to the sky may be located in any required yard but not closer than 10 feet to any front line. However, this 10-foot minimum distance is not required between parking spaces provided for single family detached dwelling unit lots and does not apply to parking spaces provided for and on the same lot with single family detached or attached dwellings provided such

spaces do not encroach into any sidewalk or trail. In addition, Par. 2 of Sect. 13-202 of the Zoning Ordinance requires that a 10-foot wide peripheral parking lot landscaped area be provided between off-street parking spaces and the front lot line for any parking lot containing 20 or more spaces and where transitional screening is not required. As a result of Zoning Ordinance Amendment ZO-04-366 that was adopted on July 12, 2004, the Board has the ability to modify the 10-foot setback and/or peripheral parking lot landscaping requirements in conjunction with the approval of a rezoning or a special exception application. At that time, it was requested by both the Planning Commission and the Board that consideration be given to granting the BZA the same authority in conjunction with their approval of special permits. As such, the proposed amendment revises Par. 8 of Sect. 11-102 and Par. 3 of Sect. 13-302 to also allow the BZA to modify the 10-foot setback and/or peripheral parking lot landscaping requirements in conjunction with the approval of a special permit.

Allow the Board to consider requests to increase fence, wall, gate and/or gate post height in conjunction with rezoning or special exception review for another use and to allow the BZA to consider requests to increase fence, wall, gate and/or gate post height in conjunction with special permit review for another use.

The proposed amendment would add a new Par. 3H to Sect. 10-104 that would allow the Board of Supervisors to approve in conjunction with the approval of a proffered rezoning or a special exception for another use, or the BZA to approve in conjunction with a special permit for another use, an increase in fence, wall, gate and/or gate post height and/or modification to the corresponding location regulations, subject to standards. Gates and gates posts are included in this proposed provision as they are typically an integral part of fence or wall and it seems logical that if the height of fence or wall is increased to also allow an increase in the height of the corresponding gate and/or gate post. In order to show the visual impact of a fence, wall, gate and/or gate post on nearby properties, proposed Par. 3H requires that the height, location, color and materials of the proposed fence, wall, gate and/or gate post and any associated berming or landscaping must be submitted with the rezoning, special exception or special permit application. Par. 3H also requires that the Board or BZA make a determination that the proposed fence, wall gate and/or gate post is in character with the existing development, and will not adversely impact the use and/or enjoyment of any nearby property. In addition, the Board or BZA can impose such conditions as it deems necessary to satisfy this criteria. In addition to the proposed additional standards, these special permit or special exception uses would be subject to the general standards for such applications set forth in Articles 8 and 9, respectively. Such standards require, among other things, conformance with the recommendations of the Comprehensive Plan, harmony with the general purpose and intent of the applicable zoning district regulations and consideration of the impacts on adjacent or neighboring properties.

Staff believes the concurrent processing of increase to fence, wall, gate and/or gate post height in conjunction with a rezoning, special exception or special permit will better afford the opportunity for a comprehensive review of the development proposal. Currently, there is limited ability to increase the fence, wall, gate and/or gate post height or to modify location provisions. When located in a P district, the Board of Supervisors can modify these provisions in conjunction with the approval of a conceptual

development plan. The Board in conjunction with the approval of a proffered rezoning or special exception, and the BZA with special permit approval, can modify the height and location requirements for fences and/or walls that provide noise attenuation for certain properties impacted by highway noise, properties impacted by noise from commercial or industrial uses on adjacent structures and for containment structures associated with outdoor recreation/sports facility playing fields/courts and golf courses. All other increases in fence, wall, gate and/or gate post height require variance approval by the BZA. If such a request to increase the height of a fence, wall, gate and/or gate post is in addition to a special permit request for another use this proposed amendment permits the BZA review both requests at the same time and as one application. If a fence, wall, gate and/or gate post modification request is in addition to a rezoning or special exception use, the Board of Supervisors is currently not the approval authority for such applications and would not be able to consider the fence, wall, gate and/or gate post modification request concurrently with the special exception or rezoning application. Staff believes that eliminating the situation where different bodies evaluate portions of an overall development proposal will offer a more efficient and comprehensive review of such development proposals. The proposed changes do not eliminate the public hearing process for fence, wall, gate and/or gate post modifications, but rather combine applications into a single request for a rezoning or special exception for another use or into a single request for a special permit for another use, thereby reducing processing time and costs for both the applicants and staff.

Clarify that the height of an accessory structures is measured from the lowest point of grade to the highest point of the structure.

Under the current Zoning Ordinance, the height of an accessory structure is measured differently than the height of a principal structure. Building height and grade are defined in Article 20 as follows:

HEIGHT, BUILDING: The vertical distance to the highest point of the roof for flat roofs; to the deck line of mansard roofs; and to the average height between eaves and the ridge for gable, hip and gambrel roofs measured from the curb level if the building is not more than ten feet distant from the front lot line, or the **grade** in all other cases.

GRADE: A reference plane representing the average of finished ground level adjoining a building at all exterior walls.

The building height definition only applies to principal structures as there is existing language in Part 1 of Article 10 of the Zoning Ordinance that pertains to the manner in which accessory structure height is determined. In most instances, accessory structure height is measured from the highest point of the structure. Therefore, if an accessory structure has a gable or hip roof, the height is measured to the top of the roof and not to the midpoint of the roof as is the case for principal structure building height. Furthermore, if there are such rooftop features as chimneys, weathervanes or flags, the height of the accessory structure is measured to the top of these features.

Although the Article 10 provisions are clear as to the upper height measurement for accessory structures, these provisions do not specify from where the bottom measurement is to be taken. The longstanding administrative interpretation has been to take the lower measurement from the lowest point of grade adjacent to the structure. Staff believes that it is appropriate to take the measurement from the lowest point of grade rather than the “average” grade as required for principal structures, given that accessory storage structures (sheds) that are less than 8½ feet in height and other accessory structures that are less than 7 feet in height have no minimum required setback from the rear or side lot lines, and measuring such structures to the average grade could result in taller structures being allowed at the property line, thereby potentially causing greater adverse impacts on adjacent properties.

The proposed amendment revises Par. 4 of Sect. 10-103 and Paragraphs 10A and 12A of Sect. 10-104 to clarify that accessory structure height is to be measured from the highest point of the structure to the lowest point of grade adjacent to the structure. In addition, the proposed amendment revises the grade definition to clarify that grade associated with the height of an accessory structure shall be deemed the lowest point of grade adjacent to the structure.

Application Fees

Given that the proposed amendments adds a new Group 9 special permit use and a new Category 6 special exception use for modification of minimum yard requirements for certain existing structures and uses, adjustments to the application fee schedule in Par. 1 of Sect. 18-106 of the Zoning Ordinance are required. The proposed fee of \$295 for these new applications is consistent with the current variance application fees. Because these new special exception and special permit uses are somewhat similar to variance applications, staff believes it appropriate for these new special permit and special exception uses to have the same filing fee as variance applications.

CONCLUSION

Staff believes that the recommended changes will accommodate certain typical modification requests in conjunction with the review of special permit, special exception, or rezoning applications. Staff believes the proposed amendment provides the flexibility to address site-specific circumstances that may warrant relief from the specified minimum yard requirements for certain existing structures or uses and the maximum fence, wall, gate or gate post height requirement, while still protecting the adjacent property owners. Further, staff believes that the clarification of the methodology used to determine the accessory structure height is beneficial and should facilitate compliance with the accessory structure height requirements. Therefore, staff recommends approval of the proposed amendment with an effective date of 12:01 a.m. on the day following adoption.

PROPOSED AMENDMENT

This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of February 27, 2006 and there may be other proposed amendments which may affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment, which other amendments may be adopted prior to action on this amendment. In such event, any necessary renumbering or editorial revisions caused by the adoption of any Zoning Ordinance amendments by the Board of Supervisors prior to the date of adoption of this amendment will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.

1 Amend Article 8, Special Permits, Part 9, Group 9 Uses Requiring Special Regulation, as
2 follows:

3
4 - Amend Sect. 8-901, Group 9 Special Permit Uses, by adding a new Par. 20 to read as follows:

5
6 20. Modification of minimum yard requirements for certain existing structures and uses.

7
8 - Add a new Sect. 8-921, Provisions for Modification of Minimum Yard Requirements for
9 Certain Existing Structures and Uses, and a new Sect. 8-922, Provisions for Increase in
10 Fence and/or Wall Height, to read as follows :

11
12 **8-921 Provisions for Modification of Minimum Yard Requirements for Certain Existing**
13 **Structures and Uses**

14
15 The BZA may approve, only in conjunction with the approval of a special permit for another
16 use, a modification of any yard requirement for an existing structure or use, including but not
17 limited to principal and accessory structures and off-street parking spaces, but only in
18 accordance with the following:

19
20 1. It shall be demonstrated that the existing structure or use complied with the minimum
21 required yards in effect when the use was established and that the yards have not been
22 reduced to less than the yards required by this Ordinance since the effective date of this
23 Ordinance, except by condemnation or by acquisition for public purposes by any
24 governmental agency.

25
26 2. The BZA may impose such conditions as it deems necessary, to include landscaping
27 and screening, to minimize the impact of the existing structure or use on adjacent
28 properties.

Amend Article 9, Special Exceptions, Part 6, Category 6 Miscellaneous Provisions Requiring Board of Supervisors' Approval, as follows:

- **Amend Sect. 9-601, Category 6 Special Exception Uses, by adding a new Par. 22 to read as follows:**

Category 6 special exceptions consist of those miscellaneous provisions set forth in various Articles of this Ordinance, which require special approval or authorization from the Board.

22. Modification of minimum yard requirements for certain existing structures and uses.

- **Add a new Sect. 9-625, Provisions for Modification of Minimum Yard Requirements for Certain Existing Structures and Uses, to read as follows**

9-625 Provisions for Modification of Minimum Yard Requirements for Certain Existing Structures and Uses

The Board may approve, only in conjunction with the approval of a rezoning or special exception for another use, a modification of any yard requirement for an existing structure or use, including but not limited to principal and accessory structures and off-street parking spaces, but only in accordance with the following:

1. It shall be demonstrated that the existing structure or use complied with the minimum required yards in effect when the use was established and that the yards have not been reduced to less than the yards required by this Ordinance since the effective date of this Ordinance, except by condemnation or by acquisition for public purposes by any governmental agency.
2. The Board may impose such conditions as it deems necessary, to include landscaping and screening, to minimize the impact of the existing structure or use on adjacent properties.

Amend Article 10, Accessory Uses, Accessory Service Uses and Home Occupations, Part 1, Accessory Uses and Structures, as follows:

- **Amend Sect. 10-103, Use Limitations, by revising Par. 4 to read as follows:**

4. All accessory uses and structures shall comply with the maximum height regulations applicable in the zoning district in which they are located, except as may be qualified by Sect. 2-506. For the purposes of determining height, unless otherwise specified in Sect. 10-104 below, the height of

an accessory structure shall be measured from the highest point of the structure to the lowest point of grade adjacent to the structure.

- **Amend Sect. 10-104, Location Regulations, by adding a new Par. 3H, and amending Paragraphs 10A and 12A, all to read as follows:**

- 3. Except as may be qualified by Sect. 2-505, a fence or wall may be located as follows. Such regulations shall not be deemed to negate the screening requirements of Article 13.

H. In addition, the Board may approve in conjunction with a proffered rezoning or a special exception for another use, or the BZA in conjunction with a special permit for another use, an increase in fence and/or wall height and/or modification to the corresponding location regulations set forth above, and/or an increase in gate and/or gate post height and/or modification to the corresponding location regulations set forth in Par. 4 of Sect. 10-104 below in accordance with the following:

(1) In order to show the visual impact of the fence, wall, gate and/or gate post on nearby properties, the height, location, color and materials of the proposed fence, wall, gate and/or gate post and any associated berming or landscaping shall be submitted with the application.

(2) The Board/BZA shall determine that the proposed fence, wall, gate and/or gate post is in character with the existing development on the site, is harmonious with the surrounding development, and will not adversely impact the use and/or enjoyment of any nearby property. The Board/BZA may impose such conditions as it deems necessary to satisfy this criteria.

- 10. The following regulations shall apply to the location of freestanding accessory storage structures:

A. For purposes of determining height, the height of an accessory storage structure shall be measured ~~from the highest point of the structure~~ in accordance with Par. 4 of Sect. 10-103 above.

- 12. The following regulations shall apply to the location of all freestanding structures or uses except those specifically set forth in other paragraphs of this Section:

A. For purposes of determining height, the height of an accessory structure shall be measured ~~from the highest point of the structure~~ in accordance with Par. 4 of Sect. 10-103 above.

Amend Article 11, Off-Street Parking and Loading, Private Streets, Part 1, Off-Street Parking, Sect. 11-102, General Provisions, by revising the introductory paragraph to Par. 8 to read as follows:

8. Except as may be qualified elsewhere in this Ordinance, off-street parking spaces that are located on the ground and are open to the sky may be located in any required yard but not closer than ten (10) feet to any front lot line, unless modified by the Board or BZA pursuant to Part 2 of Article 13; except that this ten (10) foot minimum distance shall not be required between parking spaces provided for single family attached dwellings in parking bays and the front lot lines of single family detached dwelling unit lots and shall not apply to parking spaces provided for and on the same lot with single family detached or attached dwellings, provided such space shall not encroach into any sidewalk or trail.

For single family detached dwellings on lots containing 36,000 square feet or less in the R-1, R-2, R-3 and R-4 Districts, all parking for vehicles or trailers in a front yard shall be on a surfaced area, provided, however, that this shall not be deemed to preclude temporary parking on an unsurfaced area in a front yard for a period not to exceed forty-eight (48) hours for loading, unloading, cleaning or repair of vehicles or trailers. In addition, in the R-1 and R-2 Districts, no more than twenty-five (25) percent of any front yard and in the R-3 and R-4 Districts, no more than thirty (30) percent of any front yard shall be surfaced area for a driveway or vehicle/trailer parking area; provided, however, that these limitations may be exceeded for a surfaced area that is:

Amend Article 13, Landscaping and Screening, Part 2, Parking Lot Landscaping, Sect. 13-202, Peripheral Parking Lot Landscaping, by revising Par. 3 to read as follows:

If any parking lot contains twenty (20) or more spaces and transitional screening is not required by Sections 301 and 302 below, then peripheral parking lot landscaping shall be required as follows:

3. The Board, in conjunction with the approval of a rezoning or special exception, and the BZA, in conjunction with the approval of a special permit, may approve a waiver or modification of the requirements of this Section and the requirement to provide a ten (10) foot minimum distance between a front lot line and an off-street parking space set forth in Par. 8 of Sect. 11-102. Such waiver or modification may be approved:
- A. For an interim use of a specified duration, and/or where deemed appropriate due to the location, size, surrounding area or configuration of the parking lot; and
 - B. Where such waiver or modification will not have any deleterious effect on the existing or planned development of adjacent properties.

Amend Article 18, Administration, Amendments, Violations and Penalties, Part 1, Administration, Sect. 18-106, Application and Zoning Compliance Letter Fees, by amending the Group 9 and Category 6 entries in Par. 1 to read as follows:

All appeals and applications as provided for in this Ordinance and requests for zoning compliance letters shall be accompanied by a filing fee in the amount to be determined by the following paragraphs unless otherwise waived by the Board for good cause shown; except that no fee shall be required where the applicant is the County of Fairfax or any agency, authority, commission or other body specifically created by the County, State or Federal Government. All fees shall be made payable to the County of Fairfax. Receipts therefore shall be issued in duplicate, one (1) copy of which receipt shall be maintained on file with the Department of Planning and Zoning.

Filing Fee

1.	Application for a variance, appeal, special permit or special exception:	
	Application for a:	
	Group 9 special permit	
	Open air produce stand	\$ 585
	Accessory dwelling unit	\$ 140
	Modification to minimum yard requirements for R-C lots	\$ 60
	Modification to the limitations on the keeping of animals; error in building location; modification to permitted extension regulations; <u>modification of minimum yard requirements for certain existing structures and uses</u> ; noise barriers on a single residential lot	\$ 295
	All other uses	\$ 5295
	Application for a:	
	Category 6 special exception	
	Reduction of yard requirements for the reconstruction of certain single family detached dwellings that are destroyed by casualty	\$ 0
	<u>Modification of minimum yard requirements for certain existing structures and uses</u>	\$ 295
	All other uses	\$ 5295

Amend Article 20, Ordinance Structure, Interpretations and Definitions, Part 3, Definitions, by revising the definition of Grade to read as follows:

GRADE: A reference plane representing the average of finished ground level adjoining a building at all exterior walls. For the purposes of this Ordinance, the determination of grade associated with the height of an accessory structure shall be deemed the lowest point of grade adjacent to the structure.